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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CASA LINDA PRESBYTERIAN CHURCH
IN AMERICA, ET AL,

Petitioners

vs.

GRACE UNION PRESBYTERY, INC., ET AL,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

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QUESTIONS PRESENTED

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a State Court from awarding local church property held by a corporation whose by-laws expressly devote the property to the propagation of a specific religious doctrine or belief to a group designated by an ecclesiastical body (holding a different doctrine or belief) where there is no provision in the denomination's constitution nor in any instrument of title imposing an express trust on the local church property on behalf of the ecclesiastical group.

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OCTOBER TERM, 1986

CASA LINDA PRESBYTERIAN CHURCH IN AMERICA, ET AL,

Petitioners[1]

vs.

GRACE UNION PRESBYTERY, INC., ET AL,

Respondents[2]

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

Casa Linda Presbyterian Church in America, et al, respectfully petition for a Writ of Certiorari to review the judgment of the Court of Appeals for the Fifth Supreme Judicial District of Texas in the above-entitled case.

[1] Petitioners are: Casa Linda Presbyterian Church of the Presbyterian Church in America; Brian I. Johnson; Jon K. Crow; Charles Wilson; Jeffrey S. Lynch; Ed Duff; W. C. Cornell; Granville Dutton; Fred Farr; Gene Hilton; Wes Hufnagel; Mike Jarrell; Leonard Davis; Pat Malone; Sam Rhodeheaver; Floyd Thiessen; Bob Bendy; Jack Cox; M. C. Culbertson, Jr.; Jon Johnson; Will Lowrance; Glenn Tucker; and Casa Linda Presbyterian Church in Dallas, Texas, a corporation organized under the laws of the State of Texas.

[2] Respondents are: Grace Union Presbytery, Inc.; Casa Linda Presbyterian Church in the United States; Casa Linda Presbyterian Church in Dallas, Texas; Roy Sherrod; Rawlings Diamond; John B. Watson; Carl Pietsch; and John K. Ferguson.

OPINION BELOW

The Opinion of the Court of Appeals of Texas is reported at 710 S.W.2d 700 (Tex. App.— Dallas 1986, writ ref'd n.r.e.) (App. A). The orders of the Supreme Court of Texas denying Application for Writ of Error and Motion for Rehearing of Application for Writ of Error are not reported (App. B p. 1, 3).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Supreme Judicial District of Texas was entered on April 18, 1986. The order of the Court of Appeals for the Fifth Supreme Judicial District of Texas denying a timely Motion for Rehearing was entered on June 4, 1986. The order of the Supreme Court of Texas overruling a timely Motion for Rehearing of Application for Writ of Error was entered on March 4, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3) and 28 U.S.C. Section 2101(c).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

> * * * nor shall any state deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

The Casa Linda Presbyterian Church of Dallas, Texas, began as an unincorporated religious association in 1947. In 1949, the association incorporated as a non-profit Texas corporation, under the name of "The Covenant Presbyterian Church

of Dallas, Texas." In 1952, the corporate name was changed to "The Casa Linda Presbyterian Church of Dallas, Texas."

The Casa Linda Presbyterian Church of Dallas, Texas, a Texas corporation ("CLCP Corp.") is chartered under the Texas Non-Profit Corporation Act to support public worship of Almighty God and instruction in the Christian religion according to the "Holy Scriptures and the Westminster Confession of Faith." Its by-laws expanded CLPC Corp.'s purposes to provide for maintaining a church, Presbyterian in its doctrines, tenets and form of government as those prescribed by the Holy Scriptures and the Westminster Confession of Faith. Both the charter and by-laws are devoid of any reference to any denomination.

In carrying out the purposes stated in its charter and by-laws, CLPC Corp. owns and holds title to real and personal property for the Casa Linda Presbyterian Church ("CLPC"). CLPC had been affiliated ecclesiastically with the Presbyterian Church in the United States ("PCUS") through the North Texas Presbytery and its successor Presbyteries. On January 1, 1979, the successor Presbytery of the Covenant of the PCUS merged with a Presbytery of the United Presbyterian Church in the United States of America ("UPUSA"), an ecclesiastical body subject to different doctrines than those prescribed in CLPC Corp.'s charter and by-laws, to form Grace Union Presbytery ("Respondent Presbytery").

On February 15, 1981, at a meeting of the congregation and corporation, a motion was passed, by a majority of those present and voting, "to concurrently dissolve the relationship that exists between both the corporation and congregation of Casa Linda Presbyterian Church and the Grace Union Presbytery of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America." The trial court's Conclusion of Law No. 4 asserts that this motion was void under church law "as well as pursuant to the

laws of the State of Texas." No law of the state of Texas is cited by the trial court in support of this conclusion. TEX. REV. CIV. STAT. art. 1396-2.12 provides, with respect to non-profit corporations:

> A. Unless otherwise provided in the articles of incorporation or in the by-laws, members holding one-tenth of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the members present, or represented by proxy at a meeting at which a quorum is present, shall be the act of the members meeting, unless the vote of a greater number is required by law, the articles of incorporation, or the by-laws.

The by-laws of The Casa Linda Presbyterian Church of Dallas, Texas, a Texas corporation, provide, in Section 12, that if the church has more than 100 resident commuting members, a quorum shall be one-tenth of such members (but in no event less than 25) and that, "A majority of the members present and voting shall carry any question."

On February 15, 1981, the church had 1,100 members; 419 were present at the meeting, with 285 voting in favor of the motion, 104 against, and 30 abstaining. The minister and associate minister, Brian I. Johnson and Jon K. Crow, elected to remain with the withdrawing majority. Since that date, the corporation has continued to occupy, worship in, and maintain the church building. The land on Garland Road was acquired by the church in January, 1949; the deed recites that the grantee is "The Covenant Presbyterian Church U.S. of Dallas, Texas." The Court of Appeals held that it "is undisputed that its successor in title was the Casa Linda Presbyterian Church of Dallas."

The Casa Linda Presbyterian Church of Dallas, Texas, is located within the boundaries of Grace Union Presbytery, Inc., the Respondent in this cause. The Presbytery has twenty-two (22) enumerated powers, none of which refer to the members

of the congregation, the congregation, the corporation, or the church's property.

In 1973, Respondent (then styled "Presbytery of the Covenant") had established an "Administrative Commission" to handle requests from ministers and churches seeking to withdraw from such Presbytery.

In this cause, the Commission wrote all members of the church and asked those who wished to remain loyal to Presbyterian Church in the United States to return postcards so stating. Subsequently, on March 5, 1981, the Administrative Commission held a meeting, at which, according to its minutes, it took the following action:

> There was discussion concerning possibilities of financial assistance from the Presbytery for the loyal group and possible temporary injunction preventing the dissident group from disposing of any properties or assets which they now hold.
>
> MOTION CARRIED to request Smith, Smith and Florsheim to take whatever steps are necessary to safeguard the rights and interests of the Presbytery and those persons who have indicated and will indicate their loyalty to the denominations.
>
> MOTION CARRIED that the following roster of people, and such other persons as may subsequently choose to identify themselves with this group, be recognized as the Casa Linda Presbyterian Church of Dallas, Texas, a constituent congregation of Grace Union Presbytery, a subordinate court of the Presbyterian Church in the United States and of the United Presbyterian Church in the United States of America:

Respondents contend that the foregoing action of the Administrative Commission was effective to divest the majority of title to the real and personal property of the Casa Linda Presbyterian Church, and to vest such title in the minority.

The trial court filed specific findings of fact and conclusions of law. In addition to finding (2, 3, 4) that the withdrawal meeting had been held in violation of the Pastoral Letter, and (18) that Respondents had duly determined that the minority remaining loyal to the Presbytery "constitutes the true and lawful Casa Linda Presbyterian Church, Inc.," the trial judge found:

> 6. That the Administrative Commission pursuant to the authority bestowed upon it by the Presbytery, did legally determine and declare that the Plaintiff, Casa Linda Presbyterian Church, the loyal minority congregation, was the beneficial owner of all real and personal property of Casa Linda Presbyterian Church, Inc. at 9353 Garland Road in Dallas, Texas, and was entitled to occupy and otherwise use the same.
>
> 16. The true congregation as designated by Plaintiff Presbytery through its Administrative Commission herein is entitled to ownership of all the real and personal property of Casa Linda Presbyterian Church, Inc. subject to the hierarchical and connectional laws of the Presbyterian Church in the United States.

The Court of Appeals correctly determined that there was no evidence to support Finding of Fact No. 6. The court found further error in the award of the church property to "Casa Linda Presbyterian Church, Inc.," a non-entity. Nevertheless, the Court of Appeals upheld the decision based upon the assumption that *Jones v. Wolf* permits states to follow the deference rule in all hierarchical cases and that the *Brown v. Clark*, 116 S.W. 360, decision requires that the hierarchical ecclesiastical court be given the right to designate the owner of church property by establishing which group is the "constituent congregation." The Texas Court of Appeals disregarded the ruling of this Court in *Watson v. Jones*, as reiterated in *Jones v. Wolf* that, regardless of the form of church government, it is the court's duty to enforce the express terms of an instrument of church property ownership.

The federal questions here sought by Petitioners to be reviewed were raised as follows:

1. Petitioners' Motion for Rehearing filed with the Court of Appeals in this cause challenged the determination of the Court of Appeals on the basis that:

(i) The Court of Appeals erred in applying the "deference rule" since the dedication of the property to a specific religious principle mandates the application of neutral principles of law to ensure that the property is not diverted from the terms of the trust;

(ii) The Court of Appeals erred in determining that property held by a non-profit corporaton organized and existing under the laws of the State of Texas is to be determined by application of the "deference rule"; and

(iii) The Court of Appeals violated the First and Fourteenth Amendments to the United States Constitution by failing to apply neutral principles of law to determine the ownership of the real and personal property of The Casa Linda Presbyterian Church of Dallas, Texas.

2. In their Application for Writ of Error filed with the Supreme Court of Texas, Petitioners raised the issue of whether application of the "deference rule" to determine the ownership of the church property at issue contravenes the establishment and free exercise guarantees of the First Amendment of the United States Constitution.

REASONS FOR GRANTING WRIT

I.

THE COURT OF APPEALS OF TEXAS ERRED IN DETERMINING THAT THE DEFERENCE RULE WAS APPLICABLE TO THE CHURCH PROPERTY AT ISSUE BECAUSE BOTH *WATSON v. JONES*, 80 U.S. 679, AND *BROWN v. CLARK*, 116 S.W. 360, PROVIDE FOR APPLICATION OF NEUTRAL PRINCIPLES WHERE, AS HERE, THE INSTRUMENT OF POSSESSION DEVOTES THE PROPERTY TO THE PROPAGATION OF A SPECIFIC RELIGIOUS DOCTRINE OR BELIEF CONTRARY TO THAT OF THE GROUP TO WHOM THE ECCLESIASTICAL BODY AWARDED THE PROPERTY.

The Texas Court of Appeals has improperly interpreted the language of *Jones v. Wolf*, 443 U.S. at 604, that "... a State may adopt any one of various approaches for settling church property disputes ..." to hold that

> It is clear that in *Jones* the Supreme Court held that states may constitutionally also follow the deference rule.

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The Texas Court then applied the deference rule to the church property in dispute without regard to this Court's ruling that "... the obvious duty of the court ... (is) to see that the property is not diverted from the trust which is attached to its use." This Texas holding constitutes a violation of the constitutional protection of religious freedom promulgated by this Court in *Watson v. Jones*, 80 U.S. at 723, wherein this Court stated the law relative to this type of property (held by a corporation separate and apart from the hierarchial church and for a specific purpose) as follows:

> ... an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles ... *the obvious duty of the court ... (is) to see that the property*

> *is not diverted from the trust which is thus attached to its use.* So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles described in the act of dedication, and so long as there is anyone interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses. . . . *Nor is the principle varied when the organization to which the trust is confided is of the second or associated form of government.* (Emphasis added.)

The Texas courts have disregarded the *Watson* ruling that the deference rule is not applicable where church property is expressly devoted to a specific religious doctrine contrary to that of the ecclesiastical hierarchy, even though the *Watson* principle was clearly reaffirmed in the *Jones* case as follows:

> Indeed, even in *Watson v. Jones,* a common law decision heavily relied upon by the dissent, Mr. Justice Miller, in speaking for the court, stated that, *regardless of the form of church government,* it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will or other instrument of church property ownership.

Jones v. Wolf, 443 U.S. at 603 (emphasis added).

The Texas Supreme Court in *Brown v. Clark* correctly applied the *Watson* holding to that case by first noting that "there is not attached to that property any trust either express or implied." However, in this cause, there is the express provision for the property to be held by a corporation formed to support public worship and instruction "according to the Holy Scriptures and the Westminster Confession of Faith." The corporation's concurrence in the action of Petitioners in severing their ecclesiastical relationship with Respondents manifests the corporation's approval of that action as being in accord with the corporate dedication.

The Court of Appeals did correctly determine that the trial court's finding that Respondent Presbytery did "legally determine and declare" that the minority faction was the beneficial owner of the property at issue was not supported by the record. Nonetheless, the Court of Appeals of Texas upheld the decision of the trial court on the erroneous assumption that *Watson v. Jones, supra,* and *Brown v. Clark, supra,* declare that a "hierarchical" ecclesiastical court has the right to designate the owner of church property by establishing which group is the constitutent congregation.

In *Watson v. Jones,* the United States Supreme Court classified church property disputes into three categories according to the instrument of possession and the type of church organization. The two classifications applicable to the scenario of this cause are, as follows:

> 1. The first of these is when the property which is the subject of the controversy has been, by the deed or will of the donor, *or other instrument by which the property is held,* by the express terms of the instrument, devoted to the teaching, support or spread of some specific form of religious doctrine or belief;
>
> * * * *
>
> 3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power more or less complete, in some general judicatory over the whole membership of that general organization.

Watson v. Jones, 80 U.S. at 722.

The law applicable to the third category has become known as the "deference" or "complete deference" rule. *See, First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States,* 464 N.E.2d at 459. It is this rule that the trial court and Court of Appeals erroneously applied to the property at issue.

In 1949, The Casa Linda Presbyterian Church of Dallas, Texas, was incorporated as a non-profit corporation under the name of "The Covenant Presbyterian Church of Dallas, Texas." In 1952, the corporate name was changed to "The Casa Linda Presbyterian Church of Dallas, Texas," a Texas non-profit corporation with Charter No. 100097.

The by-laws of The Casa Linda Presbyterian Church of Dallas, Texas, as amended through October 17, 1973, and in effect at the times material to this case, provide, in Section 3:

> The purposes for which this corporation is formed are:
>
> a. The promotion, enlargement and perpetuation of the spiritual and religious worship carried on by the existing unincorporated body or association of Christians known as the Casa Linda Presbyterian Church of Dallas, Texas, and to maintain a church organization, Presbyterian in its doctrine, tenets and form of government, as such *doctrines, tenets and form of government are prescribed, by the Holy Scriptures and the Westminster Confession of Faith,* and
>
> b. The conduct of the secular and material affairs of said Casa Linda Presbyterian Church, under powers such as are conferred upon corporations by the *laws of the state of Texas and/or the Holy Scriptures and the Westminster Confession of Faith,* including the power to receive and accept all lawful gifts, devises and bequeaths, and *to purchase and own, and hold title to real and personal property and to dispose of same at the will of the members of the corporation,* and all other lawful acts necessary or connected with the transaction of the secular business of the said Casa Linda Presbyterian Church.

Additionally, the by-laws provide for a distinction between the secular and spiritual affairs of the church. Section 4 of the by-laws states, as follows:

> Furthermore, the principle is recognized that there are two distinct bodies herein considered:

> (a) The religious body or association of Christians professing the Presbyterian faith,
>
> (b) The civil body recognizing the laws of the state of Texas, organized for temporal purposes,
>
> (c) Although the membership of the two bodies is identical, the distinction between the two bodies always exists and no action may ever be taken by the corporation or its officers and trustees which would infringe upon the powers of the existing unincorporated association comprising the Casa Linda Presbyterian Church, or the session of said church in any spiritual matter.

The by-laws continue to state that the management of the secular or material affairs of the corporation shall be vested in a board of trustees, the powers of which include the following, as set forth in Section 8 of the by-laws:

> All conveyances and mortgages shall be made by the trustees in the name of the corporation; provided, however, that no mortgage or conveyance shall be executed and delivered except after adoption by the members of the corporation of a resolution authorizing the execution and delivery of the conveyance or mortgage, at a meeting of the members of the corporation duly called for that purpose; that any three members of the board of trustees shall sign such documents as are necessary to make such conveyance or mortgage.
>
> The board of trustees shall be the fiscal agents of the corporation. Shall control title to and disposition of all real estate and personal property and endowment funds of the corporation. It shall keep, preserve and protect all title deeds and other documents relating to the property of the church, and have such other powers as may be conferred by the charter of the corporation, the members of the corporation, *the laws of the state of Texas* and the Holy Scriptures and the Westminster Confession of Faith.

Thus, the church property at issue was not held by an "ecclesiastical body" which is a "subordinate member of some

general church organization," but, rather, the property at issue was held by a non-profit corporation organized and existing under the laws of the state of Texas, for the propagation of a "specific religious doctrine." *Watson v. Jones,* 80 U.S. at 679.

In accord with these by-laws, the evidence is undisputed that, from time to time prior to 1981, the trustees of the corporation sold the manse of the church, gave an option on and ultimately sold a portion of the church real estate and entered into mortgages of the church property, all without any participation of the Presbytery or any other higher court in the Presbyterian hierarchy.

The record is clear that the church property is held by a Texas non-profit corporation with Charter No. 100097 whose by-laws provide in Section 3 the corporate purpose ". . . to maintain a church organization, Presbyterian in its doctrines, tenets and form of government, as . . . prescribed by the Holy Scriptures and the Westminster Confession of Faith."

There is no dispute that in 1981, Respondent Presbytery was no longer governed by the Holy Scriptures and the Westminster Confession of Faith, but rather they were governed by a constitution consisting of "our Statement of Belief, which currently is composed of nine confessions of faith . . . and our Book of Church Order, which lays out how we are to be governed and how we are to conduct worship and how we are to do discipline in the church." There is no dispute that the constituent congregation of Grace Union Presbytery established by Respondents is subject to that same Statement of Belief and Book of Church Order. There is no dispute that Petitioners voted to dissolve the relationship with Respondent Presbytery, nor that the vote was taken pursuant to the laws of Texas and in accordance with the trust to maintain a church organization with doctrine prescribed by Holy Scriptures and the Westminster Confession of Faith.

These actions of the corporation were also consistent with the Respondents' own Book of Church Order, the only instrument in evidence which Respondents contend constitutes their constitution. In the 1981-1982 edition of the Book of Church Order, the section dealing with incorporated churches, Section 6-2, set out the responsibilities of the officers of the corporation, as follows:

> To the officers of the corporation may be given by the charter and by-laws of the corporation any and all of the following responsibilities; the buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same . . .

In the 1982-1983 edition, this sentence was revised to read as follows:

> The officers of the corporation may be given any or all of the following responsibilities: holding title to church property *for the benefit of the corporation and the Presbyterian Church in the United States;* acquiring and conveying title to the property; buying, selling, and mortgaging the property of the church . . .

Respondents admit that it is the 1980-1981 edition and not the 1982-1983 edition which is "binding" in the instant litigation.

The change in the Book of Church Order was made "specifically in response to an invitation from the U.S. Supreme Court to determine whether we should amend our chapter on property." This "invitation" is contained in Justice Powell's opinion in *Jones v. Wolf,* 443 U.S. at 603-604. The "invitation" is as follows:

> Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can insure that a dispute over the ownership of church property will be resolved in accord with the desires of the members. *Id.*

Thus, Respondents themselves recognized the necessity of applying "neutral principles of law" in determining entitlement to church property under federal, state and church law where the property is held by a corporation organized under the laws of the state, especially where the by-laws of the corporation and instrument of possession explicitly provide for a dichotomy between the secular and spiritual entities for the purpose of promoting a specific religious doctrine. To hold otherwise would be, in effect, to remove from the protection of the laws of the state, an entity which is organized, existing under and bound by those laws.

As previously stated, the church property at issue is held by a non-profit organization organized and existing under the laws of the state of Texas. Additionally, the deed to the property conveyed "the property to the local church as opposed to the parent church." The deed, corporate charter and corporate by-laws are totally devoid of any reference or intimation of ownership or an implied trust in favor of Respondents. Similarly, the record is devoid of any evidence or finding that Petitioners have failed to follow the corporate dedication or by-laws in severing their ties with Respondents or that the property was not held under the authority of the Texas corporation. In fact, in severing their ties with Respondents, Petitioners were performing their obligations pursuant to the express terms of the instrument by which they held the property at issue. The Texas Courts, in awarding that property to a group with different doctrinal standards, have disregarded this Court's rulings in *Watson v. Jones* and *Jones v. Wolf* to see that property is not diverted from the trust attached to its use.

Thus, the opinions of the United States Supreme Court in *Jones v. Wolf* and *Watson v. Jones* mandate the enforcement of the "express terms" of the deed, corporate charter and corporate by-laws. Any dispute as to the deed of the church property at issue, which is held by the secular corporate entity, must be resolved in accordance with the laws of the state. Neither state

statutes nor the local corporate charter indicates that the parent church has any interest in the property. Even the provisions of the Respondents' Book of Church Order concerning ownership and control of property do not reveal any language of trust in favor of the parent church. Accordingly, ownership of the church property at issue must vest in the Petitioners as per the terms of the deed, corporate charter and corporate by-laws.

II.

THE COURT OF APPEALS OF TEXAS ERRED IN APPLYING THE "DEFERENCE RULE" TO DETERMINE THE OWNERSHIP OF THE CHURCH PROPERTY AT ISSUE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The command of the First Amendment of the United States Constitution that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." is applicable to the states through the due process clause of the Fourteenth Amendment. *Stone v. Graham*, 449 U.S. 39, 41 n. 2, 101 S.Ct. 192, 193, 66 L.Ed.2d 199 (1980); *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 744, 96 S.Ct. 2337, 2343, 49 L.Ed.2d 179 (1976) (Per Mr. Justice Blackman, with the Chief Justice and one Justice joining and two concurring in the judgment.) The purpose of the free exercise and establishment clause guarantees are two-fold: "To foreclose state interference with the practice of religious faiths and to foreclose the establishment of a state religion familiar in other Eighteenth Century systems." *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 122, 103 S.Ct. 505, 510, 74 L.Ed.2d 297 (1982).

In this cause, the application of the "deference rule" is violative of both the establishment and free exercise clause guarantees of the First Amendment of the United States

Constitution. The "deference rule" approach employed by the Court of Appeals of Texas and the trial court assumes that Petitioners, the local church, have relinquished control to Respondents, the hierarchical body. *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States,* 464 N.E.2d at 460. This presumption of relinquishment of control of church property was employed by the Court of Appeals in this cause.

The free exercise clause protects the right to select any religious faith or none at all. This concept "derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful. . . ." *Wallace v Jaffree,* U.S. , 105 S.Ct. 2479, 2488 (1985). "The free exercise of religion promotes the inviolability in individual conscience and voluntarism, recognizing that private choice, not official coercion, should form the basis for religious conduct and belief. *International Society for Krisna Consciousness v. Barber,* 650 F.2d 430, 438 (2d Cir. 1981).

The "deference rule," as applied in this cause, "discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause." *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States,* 464 N.E.2d at 460.

Whether the application of the deference rule in this cause impinges upon Petitioner's free exercise rights depends upon whether "the purpose or effect of the law is to impede the observance of . . . religion." *Forest Hills Early Learning Center v. Lukhard,* 728 F.2d 230, 240 (1984) citing *Sherbet v. Verner,* 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963). The impediment caused by the application of the "deference

rule" is self evident from the record in this cause. In order to pursue their religious philosophies, Petitioners must assume the risk of potentially losing their church property should they later determine that their beliefs are no longer represented by the hierarchial body. Such is precisely the scenario of this cause.

If a particular law "does impede religious activity, even indirectly, it violates the free exercise clause, unless the impediment is justified by a compelling state interest arising from substantial threat to public health, safety, peace or order, ... and is the least restrictive means for protecting the compelling state interest." *Forest Hills Early Learning Center v. Lukhard*, 728 F.2d at 241, citing *Wisconsin v. Yoder*, 406 U.S. 205, 221-29, 92 S.Ct. 1526, 1536-40, 32 L.Ed.2d 15 (1972). An examination of the record in this cause reveals that there is no threat to public health, safety, peace or order which would justify the impediment to the exercise of Petitioner's religious beliefs. Additionally, as the Court pointed out in *Jones v. Wolf*, the "neutral principles of law" doctine would not inhibit the free exercise of religion in any manner. *Jones v. Wolf*, 443 U.S. at 606. Thus, the application of the "deference rule" is not only unjustified by any compelling state interest but, additionally, is not the least restrictive means for protecting any state interest in this cause.

The actions of the trial court and Court of Appeals of Texas in applying the "deference rule" to the church property in issue also implicates the establishment clause of the First Amendment. "The clearest command of the establishment clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 1683, 72 L.Ed.2d 33 (1982). In *Larson*, the United States Supreme Court, per Justice Brennan, stated, as follows:

> Since *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), this court has adhered to the principle, clearly manifested in the history and logic of the

> establishment clause that no state can pass laws which aid one religion or that prefer one religion over another . . . In *Zorach v. Clauson,* 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952), we said that "the government must be neutral when it comes to competition between sects.

Larson v. Valente, 456 U.S. at 246.

The application of the "deference rule" in this cause results in judicial and state preference for Respondents, the hierarchical church, over Petitioners, the local church. This preference violates the establishment clause. Even if it were determined that the application of the "deference rule" does not prefer any denomination or sect over another in theory, its effect on Petitioners in this cause renders it unconstitutional. The United States Supreme Court has stated that "a secular purpose and a facial neutrality may not be enough, if in fact the state is lending direct support to a religious activity." *Roemer v. Board of Public Works of Maryland,* 426 U.S. 736, 747, 96 S.Ct. 2337, 2345, 49 L.Ed.2d 179 (1976). The deference to Respondents' determination that they are entitled to the property at issue is direct support and preference for the hierarchical organization.

This issue was addressed in detail in *Adams and Hanlon,* "JONES V. WOLF: CHURCH AUTONOMY AND THE RELIGION CLAUSES OF THE FIRST AMENDMENT," 128 U.Pa.L.Rev. 1291 (1980). In their article, Adams and Hanlon concluded that:

> In our view, local churches that lose control over their property, on the basis of a judicial presumption that they relinquish control to a hierarchal society, may claim that such judicial action not only violates their rights under the free exercise provision, but also constitutes a breach of the establishment clause. When faced with two competing religious groups, each of which claims the right to control certain property, civil courts must not be allowed to presume in favor of one side or the other; rather, they should be required to determine which religious society in

> fact retains legal ownership of the property. The only approach that is both consistent with the strictures of the free exercise and the establishment clauses as well as the premise — apparently accepted by all members of the court in *Jones v. Wolf* — that judicial resolution of church property disputes should reflect the intentions of the parties, is one that remains strictly neutral between the parties.

128 U.Pa.L.Rev. 1337-1338.

This concern was also addressed by the New York Court of Appeals in *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States*, 464 N.E.2d at 460. The New York Court of Appeals stated, as follows:

> Additionally, by supporting the hierarchal polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion . . .

Of even greater significance is this Court's reasoning in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 103 S.Ct. 505, 74 L.Ed.2d 297 (1982). Therein, this Court made an excellent analysis of the prohibitions of the establishment clause of the First Amendment to the U.S. Constitution. One such prohibition is to avoid "an excessive government entanglement with religion." In discussion of the establishment clause of the First Amendment, Chief Justice Burger wrote as follows:

> As these and other cases made clear, the core rationale underlying the establishment clause is preventing "a fusion of governmental and religious functions." The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated or shared with religious institutions.

74 L.Ed.2d at 307.

The Texas court's ruling in favor of Respondents violates the test applied in *Larkin*. The unrebutted evidence shows that Respondents' internal laws did not give Respondents a trust in

Petitioners' property at the time Petitioners disaffiliated; nor did those laws give any organ of Respondents' power to arbitrate property disputes with disaffiliating churches. Giving a religious body civil power over members beyond those powers assented to by the members is nothing but a pro tanto delegation of governmental powers to that religious body. Such a delegation of power is flatly forbidden by *Larkin*. Such a delegation is even more indefensible, when as is the case here, the persons over whom the religious body seeks to assert power are no longer members of the religious body. Indeed, the Texas court's ruling in this case is even more violative of the establishment clause than the statute in *Larkin* for there is not even a colorable secular interest in the Texas ruling. *Larkin* thus confirms that the Texas court violated the establishment clause of the First Amendment to the Constitution of the United States in granting to Respondents an interest in this local church's property.

Accordingly, Petitioners respectfully submit that to give a denomination an interest in local church property simply on the basis that the denomination is "hierarchical" is to "establish a religion" in direct violation of the prohibition in the First Amendment to the U.S. Constitution. Such would violate the mandates of this Court in the cases of *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960) which held that a state cannot do, by either legislative action or judicial fiat, for the parties what the parties have not first provided for between themselves in their contract with each other. Hence, in the case at bar, the binding of the local property to the denomination is solely by virtue of state action (judicial in this instance) which disregards this Court's holding in *Larkin*. Such action clearly constitutes an establishment of religion of the denomination and denial of the free exercise of religion to the members of the local congregation. Thus, Petitioners respectfully submit that the determination of the Court of Appeal of Texas should be reversed.

III.

THE COURT OF APPEALS OF TEXAS ERRED IN FAILING TO APPLY THE "NEUTRAL PRINCIPLES OF LAW" DOCTRINE IN DETERMINING ENTITLEMENT TO OWNERSHIP, POSSESSION, AND USE OF CHURCH PROPERTY.

The law applicable to the resolution of church property disputes finds its origin in *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666, 13 Wall. 679 (1871). In *Watson*, this Court promulgated alternative guidelines, the application of which depended upon the classification of the religious organization and property at issue. Property held by ecclesiastical bodies was classified under three (3) general headings: (1) The property which is the subject of controversy has been, by deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief; (2) Property held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations and owes no fealty or obligation to any higher authority; and (3) Property held by a religious congregation or ecclesiastical body which is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of the general organization. *Watson*, 80 U.S. at 722.

In the first and second classifications, the Court stated that general principles of property and civil law with regard to the application of trusts and voluntary associations should apply. *Watson*, 80 U.S. at 723-725. With regard to the third classification, the Court stated that in a hierarchical religious organization, the courts are prohibited from interfering with the decisions of ecclesiastic tribunals and that person who unite themselves to a hierarchical church organization do so with "an

implied consent" that interchurch disputes will be decided by the church courts. *Watson*, 80 U.S. at 729. The law applicable to this third classification has become known as the "deference rule."

Seventy-seven (77) years ago, shortly after the Supreme Court opinion in *Watson*, the Texas Supreme Court rendered its opinion in *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909). In *Brown*, the Texas Supreme Court, relying extensively on *Watson v. Jones* and *after noting that no trust was involved*, applied the "deference rule" to a church property dispute arising out of the Cumberland Presbyterian Church in Jefferson, Texas. The Texas Supreme Court, quoting *Watson v. Jones*, stated as follows:

> In this class of cases, we think the rule of action which should govern the civil courts founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a prepondering weight of judicial authority, is that, whenever the questions of discipline or of faith or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such positions as final, and as binding on them, in their application in the case before them. This investigation will proceed upon the assumption that the decision of the church courts was correct.

Brown v. Clark, 116 S.W. at 363.

It should be noted that the "prepondering weight of judicial authority" relied upon by the Texas Supreme Court in 1909 has become somewhat more lean with the passage of time. Aside from the acceptance of the "neutral principles of law" doctrine by the United States Supreme Court, two of the three jurisdictions relied upon in *Brown v. Clark*, Georgia and Illinois, have since discarded the "deference rule" in favor of the "neutral principles of law" doctrine. See *Jones v. Wolf*, 244 Ga. 388, 260 S.E.2d 84 (1979); *Milivojevich v. The Serbian Eastern*

Orthodox Diocese for the United States of America and Canada, 60 Ill.2d 477, 505, 328 N.E.2d 268, 282.

In 1979, the United States Court rendered its seminal opinion in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). The essential facts in *Jones v. Wolf* are identical to those in this cause in the following respects:

> At a congregational meeting held by a quorum of the local church's duly enrolled members, a majority of those present voted to withdraw from the Presbyterian Church of the United States and become united with another denomination. The deed or deeds convey the property to the local church as opposed to the parent church; neither state statutes nor the local corporate charter indicates that the parent church has any interest in the property; and the provisions of the Book of Church Order concerning ownership and control of property do not reveal any language of trust in favor of the parent church.

Under this factual scenario, the United States Supreme Court supported the adoption by Georgia, one of the jurisdictions referenced by the Texas Supreme Court in support of its opinion in *Brown v. Clark,* 16 S.W. at 363, of the "neutral principles of law" doctrine. The United States Supreme Court enthusiastically supported Georgia's adoption of the neutral principles doctrine by stating, as follows:

> The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively upon objective, well established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice. Furthermore, the neutral principles analysis shares the peculiar genius of private law systems in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the

> event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can insure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

Jones v. Wolf, 443 U.S. at 603, 99 S.Ct. at 3025.

The Georgia Supreme Court, upon the remand ordered by the United States Supreme Court, by unanimous opinion awarded the local church property to the majority faction. *Jones v. Wolf*, 244 Ga. 388, 260 S.E.2d 84 (1979). The Georgia Supreme Court stated that nothing in the "neutral statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination, had overcome the presumption of majority rule. *Jones v. Wolf*, 260 S.E.2d at 85. Similarly, the concept of majority representation is not unknown to religious associations in the state of Texas. *Wallace v. Wells*, 228 S.W. 1111, 1112, (Tex. Civ. App. — Ft. Worth 1920, no writ hist.). Upon examination of the relevant church documents, including those relevant to the attempted designation by the Presbytery of the minority faction as the "true" congregation, the Georgia Supreme Court stated:

> The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and to use the church property in the event of a schism at the local level.

Id.

The scope and impact of the United States Supreme Court's opinion in *Jones v. Wolf* was analyzed in detail in *Adams and Hanlon*, JONES V. WOLF: CHURCH AUTONOMY AND THE RELIGION CLAUSES OF THE FIRST AMENDMENT, 128 U.Pa.L.Rev. 1291 (1980). In their article, the authors assess the impact of the *Jones v. Wolf* decision as follows:

> The court's endorsement of judicial inquiry into the intentions of the parties under the rubric of neutral principles thus represents a significant doctrinal development. It presumes that more than a mere association between the parties is necessary to accord one party's rights over the other's property. A church may choose to affiliate with a separate hierarchical religious organization for certain purposes, consenting to the latter's "authority" to resolve questions of doctrine and practice for that association, and at the same time retain its autonomy and its rights to prescribe the use and control of its property. When a church affiliates on these terms, the members remain free, in the event of a disagreement over doctrine or practice, simply to sever the local church's relation with the hierarchical organization and withdraw itself and its property from that organization, regardless of any purported adjudication of this question by the hierarchy. Thus, even if VPC (Vineville Presbyterian Church) on becoming a member unit of PCUS (Presbyterian Church in the United States) consented to that body's authority to resolve questions of faith and practice for the entire membership of PCUS, that consent alone would not necessarily constitute consent on the part of VPC either to generate a trust of its property in favor of the general church or to cede to PCUS the autonomous control over its affairs, by becoming inseparably integrated into and completely subordinated to that organization.
>
> 128 U.Pa.L.Rev. 1331-1332.

In accord with this analysis, the majority of jurisdictions which have considered the resolution of church property disputes since the United States Supreme Court's decision in *Jones v. Wolf* have adopted the "neutral principles of law" doctrine. See, e.g., *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 717 (Ill. App. 1984); *First Presbyterian Church of Schenectady v. United Presbyterian Church*, 62 N.Y.2d 110, 464 N.E.2d 454 (1984); *Foss v.*

Dykstra, 342 N.W.2d 220 (S.D. 1983); and *Protestant Episcopal Church v. Barker,* 171 Cal.Rptr. 541 (1981).

Under the "neutral principles of law" doctrine, the courts are obligated to resolve disputes over the ownership of church property by resort to the general principles of law applicable to property and corporate or voluntary organizations. *Jones v. Wolf, supra; Maryland and Virginia Eldership v. Church of God at Sharpsburg, Inc.,* 396 U.S. 697, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970). An application of the "neutral principles of law" doctrine to the factual scenario present in this cause leads to the inevitable conclusion that the judgment of the trial court and Court of Appeals should have been in favor of the majority of the local church, Petitioners herein.

The Casa Linda Presbyterian Church in Dallas, Texas, is a non-profit corporation organized and existing under the laws of the state of Texas. As previously set forth, by majority vote at a meeting with a quorum present, Petitioners determined to withdraw from the respondent denomination. The vote of the majority of the members of the corporation present at the meeting was in accord with and valid under Texas law. TEX. REV. CIV. STAT. art. 1396-2.12; *Governing Board v. Pannill,* 659 S.W.2d 670, 675 (Tex. App. — Beaumont 1983, writ ref'd n.r.e.). Additionally, the deed to the church property at issue is a deed to the predecessor in name of Casa Linda Presbyterian Church in Dallas, Texas. The deed is totally devoid of any language conditioning the same upon the corporation's adherence to the doctrine of the Presbyterian Church in the United States.

Similarly, the corporate charter and by-laws of the corporation provide no basis for awarding the church property to the Respondent minority or denomination in the event of a division or schism. On the contrary, both provide for a dichotomy between, as stated in the by-laws, the "religious body or association of Christians professing the Presbyterian faith," and

the "civil body recognizing the laws of the state of Texas, organized for temporal purposes."

In accordance with the corporate charter, the by-laws grant the board of trustees, fiscal agents of the corporation, the unqualified right to "control title to and disposition of all real estate and personal property and endowment funds of the corporation." Finally, the by-laws specifically provide that, without exception, a "majority of the members present and voting shall carry any question."

An examination of the final category of documents even potentially relevant, the Book of Church Order, one of the documents, and the only one in evidence, relied upon by Respondents as comprising the constitution of the denomination, reveals that the officers of the corporation may be given by the charter and by-laws of the corporation the responsibility of buying, selling, and mortgaging of the property of the church, and acquiring and conveying title to such property. The Book of Church Order, applicable to this action, is totally devoid of any declaration that these powers were subject to any control by the denomination, let alone a power of the denomination to transfer the property to a minority of the congregation.

This omission was recognized by Respondents and remedied in a subsequent Book of Church Order. In response to an "invitation" from the United States Supreme Court, the *Jones v. Wolf* decision, Respondents revised the 1982-1983 Book of Church Order to provide that trustees of incorporated churches would hold "title to church property for the benefit of the corporation and the Presbyterian Church in the United States." However, Petitioners do not dispute that this action, referred to by the United States Supreme Court in *Jones v. Wolf* as "minimal" steps (443 U.S. at 606, 99 S.Ct. at 3027), was not taken by the Respondents in time to affect the instant controversy, which orginated in 1981.

To allow the Texas courts' decisions to stand will not only disregard this Court's rulings in *Watson* and *Jones,* it will also confuse long-settled legal principles upholding the rights of associations to dedicate property to support a specific religious doctrine. The Texas decision also disregards this Court's holding in *Larkin* in that it breaks down the constitutional barrier prohibiting secular courts to delegate governmental powers to a religious institution.

The ramifications of the Court of Appeals' opinion in this cause are not limited to Petitioners and Presbyterians. If state courts continue to misapply *Jones v. Wolf* to deny the safeguards provided by *Watson* and *Larkin,* the "Texas deference rule" may well in the future operate, as here, to deprive any congregation, denomination or association the use of property which they have purchased and upon which they worship. A rule of law which unconstitutionally deprives unwary congregations of their property should not be sanctioned wherever this Court has the power to uphold religious freedom. Thus, application of this Court's constitutional rulings on the First Amendment to the factual scenario in this cause mandates a reversal of the opinion of the Court of Appeals.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

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APPENDIX "A"

The SCHISMATIC AND PURPORTED CASA LINDA PRESBYTERIAN CHURCH IN AMERICA, et al., Appellants,

v.

GRACE UNION PRESBYTERY, INC., et al., Appellees.

No. 05-85-00599-CV.

Court of Appeals of Texas, Dallas.

April 18, 1986.

Rehearing Denied June 4, 1986.

Church brought suit seeking declaration that actions of withdrawing faction were null and void and order vesting church's real and personal property in group remaining loyal to parent church. The 191st Judicial District Court, Dallas County, Neil Daniel, J., entered judgment for plaintiffs, and withdrawing faction appealed. The Court of Appeals, Steward, J., held that: (1) trial court did not violate First and Fourteenth Amendments in applying deference rule rather than neutral principles of law to determine ownership of property of hierarchical church; (2) finding and conclusion supported judgment; (3) question whether congregational meeting to disaffiliate was void involved considerations of religious doctrine and policy and therefore was not subject to review by civil courts; and (4) judgment would be modified to correct clerical error in decree awarding church property.

Affirmed as modified.

1. Constitutional Law ⇐84.5(9), 274(3)

Trial court did not violate First and Fourteenth Amendments in applying deference rule rather than applying neutral principles of law to determine ownership of real and personal property of hierarchical church; clarifying *Presbytery of the Covenant v. First Presbyterian Church of Paris*, 552 S.W.2d 865 (Tex.Civ.App.). U.S. C.A. Const.Amends. 1, 14.

2. Courts ⇐91(1), 97(1)

Court of Appeals was bound by state Supreme Court's pronouncements on choice of methods to resolve hierarchical church property disputes, even though United States Supreme Court decision gave states choice of methods to resolve such disputes.

3. Religious Societies ⇐23(4)

Trial court's finding and conclusion that hierarchical church's presbytery duly determined that group remaining loyal to the presbytery constituted true and lawful local church and that group so designated was in law the properly designated true church and thus entitled to all of the property, both real and personal, of the local church supported judgment vesting title to the church's real and personal property in church members who remained loyal to the parent church.

4. Appeal and Error ⇐1071.5

Trial court's erroneous holding and finding were not essential to disposition of case, and hence, did not constitute reversible error where another finding and conclusion supported trial court's judgment. Vernon's Ann.Texas Rules Civ.Proc., Rule 434.

5. Religious Societies ⇐8

Question of whether church's congregational meeting to disaffiliate from parent church was void involved considerations

of religious doctrine and policy and therefore was not subject to review by civil courts.

6. Judgment ⇐ 245

Misnomer does not invalidate judgment as between parties where record and judgment together point out, with certainty, persons and subject matter to be bound.

7. Appeal and Error ⇐ 1149

Appellate court is empowered to modify judgment to correct mistake when judgment reflects clerical variance between judgment rendered and the evidence and pleadings. Vernon's Ann.Texas Rules Civ. Proc., Rule 435.

Jack Pew, Jr. Dallas, for appellants.

Lee Smith, Dallas, for appellees.

Before AKIN, DEVANY and STEWART, JJ.

STEWART, Justice.

This case concerns a dispute over the ownership of church property after some of the members of the Casa Linda Presbyterian Church of Dallas, Texas, sought to withdraw from the Presbyterian Church in the United States (PCUS), the hierarchical and parent church to which Casa Linda Presbyterian Church had always belonged. The withdrawing group appeals the trial court's judgment vesting title to the church's real and personal property in the church members who remain loyal to the parent church. In seven points of error, the withdrawing group contends that the trial court erred by (1) violating the first and fourteenth amendments of the United States Constitution in failing to apply neutral principles of law to determine church ownership; (2) holding that the hierarchy of the PCUS was authorized to designate the minority of the membership of the Casa Linda Presbyterian Church of Dallas, Texas, as titleholder of all church property; and (3) and (4)

finding that the hierarchy in fact designated the loyal group as such titleholder and finding null and void the meeting resulting in the withdrawing group's disaffiliation with the PCUS because neither finding is supported by legally or factually sufficient evidence; (5) basing the judgment on an implied trust theory, if it did, because such theory is without support in the law or evidence and was waived by appellees; (6) basing its judgment on the withdrawing group's violation of the "Pastoral Letter," if it did, because any such violation could not in effect divest title to the church property from the withdrawing group nor vest title in the loyal group; and (7) awarding the church property to "Casa Linda Presbyterian Church, Inc.," a nonexistent corporation. We do not agree that these points of error require reversal of the judgment. However, we modify the judgment to decree title in the Casa Linda Presbyterian Church of Dallas, Texas. As modified, we affirm.

The Presbyterian Church in the United States is governed according to an ascending order of ecclesiastical judicatories or "courts": Church Sessions, Presbyteries, Synods, and the General Assembly. The government of the local church is committed to its Session, the actions of which are subject to review and control by the higher church courts. PCUS is governed by a Constitution which consists of the Confession of Faith, the Larger and Shorter Catechisms, and the Book of Church Order. The Constitution delegates to the various church judicatories their respective areas of authority.

The Presbytery is given power to review the records of the Session, redress whatever the Session may have done contrary to order, and see that the Session observes the Constitution of the church. It also has power to see that the injunctions of the church judicatories are obeyed. The Presbytery alone has power to organize new churches, receive and dismiss churches, and dissolve churches, as well as to ordain, receive, dismiss, install, remove, and judge ministers. Any individual who questions an action taken by any church judicatory or who

disagrees with the decision rendered by it may appeal the action or decision to the immediately superior ecclesiastical tribunal.

On February 13, 1973, in anticipation that some of its local congregations might attempt to withdraw from the PCUS, the Presbytery of the Covenant (now known as the Grace Union Presbytery) established an Administrative Commission pursuant to provisions of the Book of Church Order to deal with any attempts by local congregations to withdraw from the Presbytery. On April 13, 1973, the Commission adopted an ecclesiastical injunction styled "A Pastoral Letter to the Ministers and Sessions of the Presbytery of the Covenant." The Pastoral Letter required that ninety days notice be given to the Presbytery by any Session prior to calling a congregational meeting for the purpose of considering a proposal to withdraw from the Presbytery. It also required that an additional ten days written notice be given to every communicant on the roll of any such church stating that the purpose of the meeting is "to consider and to act upon a proposal that the congregation vote to 'withdraw' from the Presbytery of the Covenant of the Presbyterian Church in the United States."

Casa Linda Presbyterian Church was organized as an unincorporated religious association in 1947. The association incorporated as a non-profit Texas corporation in 1949 under the name "The Covenant Presbyterian Church of Dallas, Texas"; in 1952 the corporate name was changed to "The Casa Linda Presbyterian Church in Dallas, Texas." The church has always subjected itself to the government of the Presbytery of PCUS, as have its ministers through ordination vows. On February 15, 1981, a congregational meeting was held with 429 of 1100 members present. Two hundred and eighty-five of those present, including two of the church's ministers, voted to withdraw from the PCUS. This action was taken without the ninety-day notice to the Presbytery or the ten-day notice to the members on the church roll as required by the Pastoral Letter.

This majority then united with Presbyterian Church in America and has continued to retain possession of the local church property.

On February 20, 1981, the Presbytery appointed an Administrative Commission to act for it to inquire into and resolve the difficulties in the Casa Linda Congregation. Thereafter, the Commission declared the purported withdrawal of the Congregation to be unconstitutional and therefore null and void. The Commission later suspended from their offices both withdrawing ministers and all withdrawing elder members of the Session, except one, and assumed original jurisdiction over the congregation in place of the Session. In addition, the Commission recognized the members of the congregation who remained loyal to PCUS "as the Casa Linda Presbyterian Church of Dallas, Texas, a constituent congregation of Grace Union Presbytery . . . ." None of appellants availed themselves of the right to appeal the actions of the Commission.

When the withdrawing group refused to turn over all of the local church property to the Presbytery and the loyal group, they filed suit, requesting the court to declare the actions of the withdrawing faction null and void and to vest the church's real and personal property in the loyal group. Upon a judgment for Presbytery and the loyal group, the withdrawing faction appeals.

Although appellants assert seven points of error, the main thrust of their argument is that this controversy should be decided by application of the neutral principles of law method for resolving church property disputes, articulated in the United States Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); that neutral principles of law require the award of the local church property to appellants; and that the authority relied upon by the trial court is inconsistent with *Jones v. Wolf* and is not a correct application of neutral principles of law.

Appellees respond that the decision in *Jones v. Wolf* does not require state courts to use the neutral principles of law approach to decide church property disputes; that *Jones* also reaffirmed the deference rule as a constitutional approach to resolving hierarchical church property disputes; that the trial court relied on Texas authority which applied the deference rule; and, therefore, that neither the authority relied upon by the trial court nor its judgment is inconsistent with the *Jones v. Wolf* decision.

[1] First, we consider appellants' seventh point of error in which they contend that the trial court violated the first and fourteenth amendments to the United States Constitution in failing to apply neutral principles of law to determine the ownership of real and personal property of the Casa Linda Presbyterian Church. We do not agree. The United States Supreme Court has approved two methods for deciding title to church property. The first, known as the "deference rule," was established in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871). In that case, the Court held that in a hierarchical religious body[1] such as the PCUS, the civil courts are prohibited from interfering with the decisions of ecclesiastical tribunals; it was considered that persons who unite themselves to a hierarchical church organization do so with an "implied consent" that intrachurch disputes, including disputes over church property, will be decided by the church courts. Later, in the case of *Gonzalez v. Archbishop*, 280 U.S. 1, 16, 50 S.Ct. 5, 7, 74 L.Ed. 131 (1929), the Court recognized that civil courts have the right to determine whether a church decision resulted from fraud, collusion, or arbitrariness. Both *Watson* and *Gonzalez* were federal common law decisions. However,

[1] The Supreme Court defined a "hierarchical denomination" as one in which "the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power more or less complete, with some supreme judicatory over the whole membership of that organization." *Watson*, 80 U.S. (13 Wall.) at 722.

after the establishment clause and the free exercise clause of the first amendment were incorporated into the fourteenth amendment and thereby made applicable to the states, the Supreme Court reaffirmed the deference rule and implied that it had constitutional standing. *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960); *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952).

The second approach, known as "neutral principles of law," was first enunciated by the Supreme Court in *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). In that case, involving a property dispute between two local churches on one hand and the parent church on the other, the Court recognized that civil courts may resolve litigation over church property on the basis of "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." 393 U.S. at 449, 89 S.Ct. at 606.

We now consider whether the more recent ruling by the Supreme Court in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), upon which appellants so heavily rely, has altered prior law. The facts of *Jones v. Wolf* are similar to the present case in the following respects: at a congregational meeting held by a quorum of the local church's duly enrolled members, a majority of those present voted to withdraw from the Presbyterian Church of the United States and become united with another denomination; the deed or deeds convey the property to the local church as opposed to the parent church; neither state statutes nor the local corporate charter indicates that the parent church has any interest in the property; and the provisions of the Book of Church Order concerning ownership and control of property do not reveal any language of trust in favor of the parent church. Following neutral principles of law, the Georgia state courts in *Jones* accordingly

held that legal title to the property of the local church was vested in the local congregation. "Without further analysis or elaboration, they further decreed that the local congregation was represented by the majority faction. . . ." *Id.* at 601, 99 S.Ct. at 3024. The United States Supreme Court held that although a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute, neither the trial court nor the Georgia Supreme Court explicitly stated it was adopting a presumptive rule of majority representation; that is, that under state law, the local congregation was represented by the majority faction at the congregational meeting. Thus, the Supreme Court reversed for the state court to decide the very issue that is before our court in this case: when title to church property is vested in the local church or congregation, what rule of law governs the determination of which of two competing factions represents the "local church" or the "local congregation"?

Nevertheless, appellants interpret the *Jones* decision as requiring a state to adopt the neutral principles of law approach. We disagree. The Supreme Court did not prohibit a state from using a different method to resolve such disputes. The Court reiterated that the first amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice and that it requires civil courts to defer to the resolution of these issues by the highest court of a hierarchical church organization that has considered them. It also declared, however, that:

> Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving such property disputes. Indeed, a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether ritual or liturgy of worship or the tenets of faith.

443 U.S. at 604, 99 S.Ct. at 3026.

It is clear that in *Jones* the Supreme Court held that states may constitutionally also follow the deference rule. The court simply concluded "that the first amendment [does not require] the states to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." *Id.* Therefore, we hold that the trial court in this case did not violate the first and fourteenth amendments in failing to apply neutral principles of law to determine the ownership of the church property.

All parties agree that the trial court in our case relied on the decision in *Presbytery of the Covenant v. First Presbyterian Church of Paris,* 552 S.W.2d 865 (Tex.Civ.App. — Texarkana 1977, no writ). The facts of that case are also very similar to ours: the majority of those members attending a local church meeting voted to withdraw from the PCUS; the notice requirements set forth in the Pastoral Letter were not followed; the withdrawing faction took possession and asserted ownership of church property; and the Presbytery designated the minority as the true congregation.

The Texarkana Court ascertained which faction was sanctioned by the PCUS and the name in which the property was conveyed. In deciding for the Presbytery, the court declared:

> When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity. *Norton v. Green,* 304 S.W.2d 420 (Tex.Civ.App. — Waco 1957, writ ref'd n.r.e.); *Bramlett v. Young,* 229 S.C. 519, 93 S.E.2d [sic] 873 (1956); *St John's Presbytery v. Central Presbyterian Church, supra; Adickes v. Adkins,* 264 S.C. 394, 215

> S.E.2d 442 (1975). In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights. In doing so, the court applies neutral principles of law as required by *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church, supra; Bramlett v. Young, supra.*
>
> * * * *
>
> [I]t became the prerogative of the governing judicatories of PCUS to determine if the withdrawing faction or those on the church roll who remained faithful to PCUS and who wished to remain members of it constituted the lawful congregation of the First Presbyterian Church of Paris U.S. That question has been considered and finally ruled upon by those authorities. Those persons constituting the loyal faction have submitted themselves to the judicatories of PCUS and have been recognized by such as the duly existing local congregation. They therefore have the identity to make of them the First Presbyterian Church of Paris, U.S., and they are entitled to possession and control of the property conveyed to that Church.

Id. at 871. Although the court purported to apply neutral principles of law in the mistaken belief that the *Hull* decision required their application, the court in fact applied the deference rule in reaching its decision.

Our intermediate appellate courts have consistently followed the deference rule in deciding hierarchical church property disputes since the Texas Supreme Court ruling in *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909). In *Brown*, an ecclesiastical disagreement within a Presbyterian Church resulted in a suit for the property of that church. The Texas Supreme Court, relying on *Watson v. Jones*, stated:

> "In this class of cases, we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a prepondering weight of

> judicial authority is that, whenever the questions of discipline or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them" (quoting *Watson v. Jones)*. This investigation will proceed upon the assumption that the decision of the church courts is correct.

Brown. 116 S.W. at 363. The one non-ecclesiastical issue the Texas Supreme Court examined was that of title to the property:

> The deed of the property was made to the trustees of the Cumberland Presbyterian Church at Jefferson, Tex. It expressed no trust nor limitations upon the title. The property was purchased by the church and paid for in the ordinary way of business, and there is not attached to that property any trust either express or implied. It follows, we think, as a natural and proper conclusion, that the church to which the deed was made still owns the property, and that whatever body is identified as being the church to which the deed was made must still hold the title. The Cumberland Presbyterian Church at Jefferson was but a member of and under the control of the larger and more important Christian organization, known as the Cumberland Presbyterian Church, and the local church was bound by the orders and judgments of the courts of the church.

Brown, 116 S.W. at 365. *Brown v. Clark* is the only opinion issued by the Texas Supreme Court on hierarchical church property disputes. Only four of our lower courts have addressed this type of property dispute since *Brown v. Clark,* the latest being the *First Presbyterian Church of Paris* case relied on by the trial court and discussed above. All of them cite the *Brown v. Clark* decision and all except *Browning v. Burton,* cite *Watson v. Jones.* In *Cussen v. Lynch,* 245 S.W. 932 (Tex.Civ.App. — Amarillo 1922, no writ), the Court considered a dispute involving the Roman Catholic Church, and concluded that ecclesiastical decisions by church tribunals are

binding on the civil courts in cases involving dependent property rights. In a case involving the hierarchical African Methodist Episcopal Church, the Austin Court of Appeals decided that a local church which consented to the laws of the parent church are bound by these laws, and withdrawing members of the local church lose rights to the abandoned church. *Browning v. Burton,* 273 S.W.2d 131 (Tex.Civ.App. — Austin 1954, writ ref'd n.r.e.). In *Norton v. Green,* 304 S.W.2d 420 (Tex.Civ.App. — Waco 1957, writ ref'd n.r.e.), a case involving the PCUS, the court decided ownership and possession of church properties recorded in the names of individuals and corporations acting as trustees. The Court stated:

> . . . where there has been a division in a congregation, *those members who renounced their allegiance to the church lost any rights in the property involved and the use thereof belongs to the members which remain loyal to the church. It is a question of identity.* (emphasis added)

Id. at 424 (emphasis added).

Prior to *Jones v. Wolf,* the Georgia Supreme Court had adopted the neutral principles of law approach in *Presbyterian Church v. Eastern Heights Church,* 225 Ga. 259, 167 S.E.2d 658 (1969), while Texas courts have consistently followed the deference rule. The difference in state law accounts for the different methods used in the two state courts to resolve hierarchical church property disputes. The Supreme Court approved both methods in *Jones v. Wolf.*

Here, it is undisputed that the deed to the church property was in the name of "Covenant Presbyterian Church, US," and that its successor in title was the Casa Linda Presbyterian Church of Dallas, Texas. As in *Jones v. Wolf,* the issue is whether appellants or appellees represent the "Casa Linda Presbyterian Church of Dallas, Texas." Under that decision, state law controls the determination of this issue. Our state law requires deference to the Presbytery's identity of appellees, the loyal group, as the representative of the local church: con-

sequently, it follows that appellees are entitled to possession and use of all church property.

[2] Appellants do not challenge the judgment in this case on the basis that the trial court erred because it followed the Texarkana case. Instead, they urge us to depart from prior Texas law, which we have shown has consistently followed the deference rule, and to adopt the neutral principles of law rule approved by the United States Supreme Court in *Jones*. We recognize that in 1909 the Supreme Court may have felt compelled to follow the deference rule because it thought the *Watson v. Jones* decision required its application at the time *Brown v. Clark* was decided and that the lower courts felt compelled to follow *Brown v. Clark*. Even though the *Jones v. Wolf* decision now gives the states a choice of methods to resolve hierarchical church property disputes, our supreme court has nevertheless spoken on this issue. We are bound by the court's pronouncements on the law until it rules to the contrary. *Jones v. Hutchinson County*, 615 S.W.2d 927, 933 (Tex.App. — Amarillo 1981). Where the law is settled, the obligatory course for an intermediate court is judicial self-restraint. *See Watson v. Zep Manufacturing Co.*, 582 S.W.2d 178, 180 (Tex.Civ.App. — Dallas 1979, writ ref'd n.r.e.). Any reconsideration of the deference rule must be made, if at all, by the supreme court. Because we decline to abandon the deference rule for determining the present controversy, the judgment must be affirmed unless the trial court otherwise committed reversible error in the trial.

In two points of error, appellants contend that the trial court erred in holding that the Presbytery of PCUS was authorized to designate the minority group or the local church as title holder of the real and personal property of the church and in finding that the Presbytery in fact designated this group as title holder of such property. Specifically, appellants complain of the following finding of fact:

> That the Administrative Commission pursuant to the authority bestowed upon it by the Presbytery, did legally determine and declare that the Plaintiff, Casa Linda Presbyterian Church, the loyal minority congregation, was the beneficial owner of all real and personal property of Casa Linda Presbyterian Church, Inc. at 9353 Garland Road, in Dallas, Texas, and was entitled to occupy and otherwise use the same.

Our attention has not been directed to any evidence in the record, nor have we found any, indicating the Administrative Commission had the authority to or did "declare and determine" that the loyal minority was beneficial owner of all church property. At most, the commission demanded "on behalf of the designated congregation which now constitutes the Casa Linda Presbyterian Church under orders of the Commission" that appellants turn over all title and property to the Commission for the benefit of the loyal congregation. Consequently, since no evidence exists to support this finding, it cannot support the trial court's judgment.

[3, 4] Nevertheless, we must sustain the trial court's judgment if it is correct on any theory of law applicable to the case regardless of whether the trial court gives the correct legal reason for its judgment or whether it gives any reason at all. *Gulf Land Co. v. Atlantic Refining Co.*, 134 Tex. 59, 131 S.W.2d 73, 84 (1939). The record reflects that the trial court made 23 other findings of fact and 17 other conclusions of law, none of which were contested by appellants. These other findings of fact are, therefore, final and we are bound by them. *Texas Real Estate Commission v. Hood*, 617 S.W.2d 838 (Tex.Civ.App. — Eastland 1981, writ ref'd n.r.e.). Included among these are the finding and conclusion that the Presbytery duly determined that the group remaining loyal to the Presbytery constituted the true and lawful Casa Linda Presbyterian Church, Inc. and that the group so designated is in law the properly designated true church *and thus* entitled to all of the property, both real and personal of said church. This finding

and conclusion support the trial court's judgment under the Texas authority cited herein. Thus, the erroneous holding and finding of which appellants complain were not essential to the disposition of the case and, hence, do not constitute reversible error under Rule 434 of the Texas Rules of Civil Procedure. *Worden v. Thornburg*, 564 S.W.2d 480, 486 (Tex.Civ.App. — Corpus Christi 1978, writ ref'd n.r.e.).

In their third point of error, appellants contend that the trial court erred in its finding that the meeting of February 15, 1981, was void under church law, due to a lack of legally or factually sufficient evidence to support such finding. In determining a "factual insufficiency" point, we must consider all the evidence in order to determine whether the evidence supporting the findings is so weak, or the evidence to the contrary so overwhelming, that the findings should be set aside and a new trial ordered. *In Re King's Estate*, 150 Tex. 662, 244 S.W.2d 660, 661 (1951). The proper test to determine if the evidence is legally insufficient to support the findings upon which the judgment is based requires the reviewing court to consider evidence and its inferences in the light most favorable to factual determinations that support the judgment. *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex.1965).

[5] The record indicates that the Commission of the Presbytery declared the purported withdrawal of the congregation to be unconstitutional due to lack of notice to the Presbytery as required by the Pastoral Letter and therefore null and void. Appellants, on the other hand, have not introduced any controverting evidence on this point. Moreover, the question of whether the congregational meeting to disaffiliate was void involves considerations of religious doctrine and policy and therefore is not subject to review by civil courts. *Jones v. Wolf*, 443 U.S. at 602, 99 S.Ct. at 3024. Appellants' point of error three is overruled.

We need not address appellants' points of error five and six contending that the trial court erred *if* it based its judgment on an implied trust theory or on any violation of the "Pastoral Letter" because the judgment is otherwise supported by the trial court's deferring to the Presbytery's identification of the true congregation and then awarding the church property to that designated group. *Presbytery of the Covenant v. First Presbyterian Church of Paris, Texas,* 552 S.W.2d at 872. Moreover, even if the trial court erred as appellants contend, an erroneous conclusion of law does not require reversal when a proper judgment is rendered. TEX.R.CIV.P. 434. *Scholz v. Heath,* 642 S.W.2d 554, 559 (Tex.App. — Waco 1982, no writ).

[6] Finally, the withdrawing faction argues in its fourth point of error that the trial court erred in awarding the church property to "Casa Linda Presbyterian Church, Inc.," a name or entity not shown to be entitled to such property under any theory of record. Although such an organization does not exist in the present case, a misnomer does not invalidate a judgment as between parties where the record and judgment together point out, with certainty, the persons and subject matter to be bound. *Mattocks v. Lloyd Oil Corp.,* 45 S.W.2d 440 (Tex.Civ.App. — Austin 1932, writ ref'd). The withdrawing faction's fourth point of error is overruled.

[7] When the judgment reflects a clerical variance between the judgment rendered and the evidence and pleadings, the appellate court is empowered to modify the judgment to correct the mistake. TEX.R.CIV.P. 435. *See Catlett v. Catlett,* 630 S.W.2d 478, 483 (Tex.App. — Fort Worth 1982, writ ref'd n.r.e.); *Soto v. Doehne,* 625 S.W.2d 60, 64 (Tex.App. — San Antonio 1981, no writ). Accordingly, we modify the judgment to decree title in the Casa Linda Presbyterian Church of Dallas, Texas.

As modified, the judgment is affirmed.

APPENDIX B

SUPREME COURT OF TEXAS
P.O. Box 12248

Supreme Court Building
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Mary M. Wakefield, Clerk

October 8, 1986

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RE: Case No. C-5503

STYLE: CASA LINDA PRESBYTERIAN CHURCH OF
THE PRESBYTERIAN CHURCH IN
v. GRACE UNION PRESBYTERY, INC. ET AL.

Dear Counsel:

Today, the Supreme Court of Texas refused the above referenced application for writ of error with the notation, No Reversible Error.

Respectfully yours,

Mary M. Wakefield, Clerk

By /s/ BLANCA E. MORIN
Deputy

APPENDIX B

SUPREME COURT OF TEXAS
P.O. Box 12248

Supreme Court Building
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Mary M. Wakefield, Clerk

March 4, 1987

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RE: Case No. C-5503

STYLE: CASA LINDA PRESBYTERIAN CHURCH OF
THE PRESBYTERIAN CHURCH IN
v. GRACE UNION PRESBYTERY, INC. ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

Mary M. Wakefield, Clerk

By /s/ BLANCA E. MORIN
Deputy

Supreme Court, U.S.
FILED
JUN 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1911

In The
Supreme Court of the United States
October Term, 1986

THE SCHISMATIC AND PURPORTED CASA LINDA PRESBYTERIAN CHURCH IN AMERICA, *et al.*,
Petitioners,

v.

GRACE UNION PRESBYTERY, INC., *et al.*,
Respondents.

On Writ of Certiorari to the Court of Appeals for the Fifth Supreme Judicial District of Texas

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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QUESTIONS RESTATED

The First and Fourteenth Amendments to the United States Constitution are inapplicable to this case because a constitutionally accepted method of determining church ownership of property rights has been decided by the State Courts of Texas in favor of Respondents without impermissible delving into church doctrine and polity, and such correct decision is not diminished by self-serving statements of by-laws of corporations created under state law, or alleged differences in church doctrine, not presented nor tried below, nor by a self-serving argument as to the lack of an express trust allegedly deciding such matters, such trust theory not having been presented, nor tried, nor decided in the State Courts below.

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No. 86-1911

In The
Supreme Court of the United States
October Term, 1986

THE SCHISMATIC AND PURPORTED CASA LINDA PRESBYTERIAN CHURCH IN AMERICA, *et al.*,
Petitioners,

v.

GRACE UNION PRESBYTERY, INC., *et al.*,
Respondents.

On Writ of Certiorari to the Court of Appeals for the Fifth Supreme Judicial District of Texas

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

STATEMENT OF JURISDICTION

Respondents believe that there is substantial doubt whether the alleged federal issue in this case was presented to and decided by the Texas state courts. Petitioners herein plead "strict chain of title" (calling it "neutral

principles") in their pleadings and briefs in the Texas appellate courts, and all of them; then, also for the first time, Petitioners here raise an alleged "departure from doctrine" theory. This new theory has absolutely no basis in the evidence below, there is no finding or holding of any court below on this new theory, and Petitioners have not heretofore raised this issue. The Texas Court of Appeals reviewed the trial court's judgment and affirmed it, all without any "departure from doctrine" argument or any argument about the property being devoted to a particular religious propagation. The Texas Supreme Court did not disturb this holding. Thus, this Court lacks jurisdiction over this case. If this Court determines that jurisdiction does exist, the petition for Writ of Certiorari should be denied, as will be shown below.

STATEMENT OF THE CASE

This is a church dispute. Petitioners herein are a dissident and schismatic faction formerly belonging to the Casa Linda Presbyterian Church in Dallas, a constituent and member church of the Presbyterian Church in the United States (PCUS), a hierarchical and connectional church, represented in part herein by its Presbytery, Grace Union Presbytery, Inc., one of (the main) Respondents herein.

The Petitioners herein, The Schismatic and Purported Casa Linda Presbyterian Church, *et al.* (hereinafter "Petitioners"), called a congregational meeting of the local church for the avowed purpose of dis-affiliating from the Presbyterian Church in the United States (PCUS). The

meeting was not attended by a majority of the members of the Casa Linda Presbyterian Church; in fact, it was not even attended by one-half (½) of the members. The meeting was not in compliance with stated church law. It was in violation of Presbytery directions and instructions. A majority of those present at that meeting (the Schismatics) voted to "withdraw" from PCUS, attempting the taking of all of the Church property, both realty and personalty, with them, and away from the Presbytery. They further sought to affiliate with the Presbyterian Church in America which had previously and officially been determined by Respondent Presbytery to be schismatic. It still is.

The Respondents herein, the loyal and continuing congregation, brought an action against the dissident faction to enjoin property disposition and for a declaratory judgment, declaring ownership of all property of the local church to continue to be in the loyal and true congregation as previously designated by PCUS, through the Presbytery. The Schismatics, having lost in the trial court, began a series of appeals including to the Court of Appeals and then to the Texas Supreme Court. Having lost at every level, (three Courts and five judgments and orders), they now seek to overturn all of the Texas Courts in this Honorable United States Supreme Court.

The facts in the Trial Court were so conclusively in favor of the Respondents, the Trial Court took the case away from the jury and decided in Respondents' favor, as embodied in the Court of Appeals opinion (please see Appendix "A" to Petitioner's brief). Further, there were 23 other findings of fact and 17 other conclusions of law

that were totally unchallenged in the proceedings below. These were all in favor of Respondents.

No amount of purported change of doctrine, which is not only unsupported but which was not offered into evidence below, will avail the Petitioners. The Courts of Texas have long held, beginning in *Brown v. Clark,* 116 S.W. 360 (Tex. 1909) and subsequent decisions thereto, concluding with *Presbytery of the Covenant v. First Presbyterian Church of Paris* case, 552 S.W.2d 865 (Tex.Civ. App.—Texarkana, 1977), deference to the higher judicatories of the church is the law of the State of Texas.

An Administrative Commission of Presbytery was specifically clothed with all powers of Presbytery to deal with this matter. Petitioners generally and specially ignored and defied each and every admonition of the Administrative Commission, and as a consequence thereof, all ministers and other elders (named Petitioners) were defrocked as officers of the Presbyterian Church and given notice of their right to appeal through the Church courts, all of which they steadfastly ignored and still ignore. The ministers have now left the local church and have gone elsewhere.

An injunction was entered by agreement allowing Petitioners to occupy the premises temporarily, but prohibiting any disposition or attempted disposition of any property. That injunction has been dissolved because of incorporation into the final judgment lodging all property and property rights in Respondents.

As shall be seen more fully, *infra,* this matter is squarely governed in the first instance by the United States Supreme Court case of *Jones v. Wolf,* 443 U.S. 595 (1979), and then, in the second instance, by state law.

Jones v. Wolf, supra, clearly and unambiguously states that there are several ways a hierarchical church dispute can be settled, including the method of deference. Because there are two (2) groups claiming to be "Casa Linda Presbyterian Church," the forefront and only question has been, "Who is Casa Linda Presbyterian Church?" Secondly, as per *Jones v. Wolf,* "What is state law?" Both have been decided by state court and the church courts in favor of Respondents.

The true and loyal Casa Linda Presbyterian Church (Respondents) is alive and well. There has been no cessation in the existence of the true church from the date of schism to the present. Once again, "Who is Casa Linda Presbyterian Church?" This question has been unanimously decided by all Courts involved—the Church Courts; the Trial Court; the Court of Appeals and the Texas Supreme Court. All have held that the true church is the Respondents herein, the Loyalists, and that church is entitled to all of the property, real and personal, of the local church.

———o———

REASONS WHY THE PETITION SHOULD BE DENIED (COUNTERPOINTS)

COUNTERPOINT NO. I.

THE TEXAS COURT OF APPEALS DID NOT ERR. IT CORRECTLY APPLIED CONSTITUTIONAL PRINCIPLES IN FOLLOWING *JONES V. WOLF,* 443 U.S. 595 (1979), AS WELL AS PREVIOUS TEXAS DECISIONS, IN DETERMINING OWNERSHIP OF CHURCH PROPERTY WHERE THE DEED OF GRANT DID

NOT DEVOTE CHURCH PROPERTY TO THE PROPAGATION OF A SPECIFIC RELIGIOUS DOCTRINE OR BELIEF, NOR WOULD IT HAVE MATTERED BECAUSE SUCH A DETERMINATION WOULD HAVE INVOLVED AN UNCONSTITUTIONAL INQUIRY INTO CHURCH DOCTRINE AND POLITY. (GERMANE TO PETITIONERS' POINT NO. I.)

COUNTERPOINT NO. II.

THE TEXAS COURT OF APPEALS DID NOT ERR, BECAUSE IT FOLLOWED PRINCIPLES OF THE U.S. CONSTITUTION (FIRST AND FOURTEENTH AMENDMENTS) AND ALSO FOLLOWED THIS COURT'S DECISION IN *JONES V. WOLF, SUPRA*, AND THE LAWS OF THE STATE OF TEXAS, AS ENUNCIATED BY THE STATE'S HIGHEST COURT, IN APPLYING A DEFERENCE RULE CONSONANT WITH ALL OF THE ABOVE. (GERMANE TO PETITIONERS' POINT NO. II.)

COUNTERPOINT NO. III.

THE COURT OF APPEALS OF TEXAS DID NOT ERR IN NOT APPLYING A "NEUTRAL PRINCIPLES OF LAW" THEORY IN DETERMINING OWNERSHIP, POSSESSION AND USE OF CHURCH PROPERTY, WHERE THERE WAS NO QUESTION AS TO A BARE CHAIN OF TITLE, BUT ONLY AS TO THE IDENTITY OF THE TRUE CONGREGATION ENTITLED TO THE SAME AS DETERMINED BY THE HIGHEST CHURCH COURTS OF THE PRESBYTERIAN CHURCH. (GERMANE TO PETITIONERS' POINT NO. III.)

———o———

ARGUMENT AND AUTHORITIES

The argument and authorities cited by the Schismatics in their Reason No. I for Granting the Writ are clearly argument *in extremis*. They are replete with inaccuracies and a thorough re-hashing of the "departure from doctrine" argument. If their position is so well settled in the law, why did they not raise it in the trial court or the Court of Appeals? The Schismatics first condemn the idea of any sort of trust being present, then turn around and state that there was a trust of sorts for the propagation of a certain religious belief (presumably the Schismatics' own religious belief). It is a thinly disguised attempt to raise the issue of "departure from doctrine" theory which was put to rest years ago by this Honorable United States Supreme Court. It is a theory which requires the Court to go into a searching inquiry of church doctrine, polity and practices at particular times and which seeks to have a Court supplant its ideas for those of the ruling church judicatories. It is an idea which tries to drag the Court into an ecclesiastical question which has already been settled and ruled upon by the very denomination itself. It is doubtful that this argument by the Schismatics is appropriate or timely now as there is no evidence, in any Court below that there has been a departure from doctrine. It is too late. Texas courts have decided the fact issues, and this one was not even presented. It is merely raised now belatedly and as a justification for schismatic behavior.

THE "DEFERENCE" RULE

The Supreme Court first adopted, in 1872, a rule which has become known as the "deference rule," in de-

ciding church property cases. The benchmark case was *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), a case involving a property dispute in the United Presbyterian Church. In *Watson v. Jones, supra,* the Supreme Court enunciated as a matter of federal common law a broad doctrine of judicial deference to the internal decision-making processes of religious denominations, based upon the denomination's polity or form of government. In framing the "deference rule" the Supreme Court distinguished between two types of religious denominations, which in later cases have been respectively described as "hierarchical" denominations and "congregational" denominations.

The Supreme Court defined a "hierarchical denomination" as one in which "the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior acclesiastical tribunals with a general and ultimate power of control more or less complete, with some supreme judicatory over the whole membership of that organization." *Watson v. Jones, supra.* The Supreme Court stated:

> "In cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all. These are called in the language of the church organs, "judicatories," and they entertain appeals from the decisions of those

> below, and prescribe corrective measures in other cases.
>
> In this class of cases we think the rule of action which should govern the civil courts . . . is that, whenever the questions of discipline, or of faith, or of ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them, in their application to the case before them."

Watson v. Jones at 726-27.

A "congregational" or independent church is "a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

Subsequent Supreme Court decisions discussing the deference approach have not altered the definitions of hierarchical and congregational denominations set forth in *Watson v. Jones*, e.g., *Jones v. Wolf*, 443 U.S. 595, 619 (1979) (Powell, J., dissenting); *Maryland and Virginia Eldership of the Churches of God v. Sharpsburg Church of God, Inc.*, 396 U.S. 367 (1970) (Brennan, J., concurring); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 110 (1952).

In *Barkley v. Hayes*, 208 F.319 (D.Mo. 1913), *aff'd sub nom.*; and *Shepard v. Barkley*, 247 U.S. 1 (1918), the Supreme Court of the United States stated that the deference principles "have been so affirmatively and conclusively settled, that it is unnecessary to restate them." (See also *Kreshik v. Saint Nicholas Cathedral*, 344 U.S.

94 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

The "neutral principles" approach had first been mentioned by the Supreme Court in *The Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) and *Maryland and Virginia Eldership of the Church of God v. Sharpsburg Church of God, Inc.*, 393 U.S. 367 (1970) (*per curiam*).

The Supreme Court of the United States held in *Jones v. Wolf* that states may constitutionally follow either the deference rule or the neutral principles rule. The decision did not purport to change the law of any state; rather the effect of the decision was to allow a state constitutionally to apply the neutral principles rule if that state so desires. In short, a state may follow either the deference approach or the neutral principles approach, and it unquestionably turns on what the law of any given state is.

This is clearly seen in the language of *Jones v. Wolf*:

> "Subject to these limitations, however, the First Amendment *does not dictate* that a State must follow a particular method of resolving church property disputes. Indeed, a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether ritual or liturgy of worship or the tenets of faith." (Emphasis added.)

443 U.S. at 604.

Further:

> "[In the absence of fraud or collusion] the First and Fourteenth Amendments mandate that civil courts shall not disturb the decision of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." (Citing *Serbian Orthodox Diocese.*)

443 U.S. at 604, fn 4.

The dominant concern of the Supreme Court in *Jones v. Wolf* is clear—the courts should avoid excessive or improper entanglement in church affairs. The holding of the Court in this case is further gleaned from the following language in *Jones v. Wolf*:

> "It is also clear . . . that the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 at 710 (1976).
>
> "As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese,* 426 U.S. 724-725, 96 S.Ct. 2387; cf. *Watson v. Jones,* 80 U.S. 679, 733-734, 13 Wall 679, 733-734, 20 L.Ed. 666 (1871)."

Jones v. Wolf, supra, at 3025.

Note again the real issue: *compulsory* deference. The Court stated that a State is "entitled" to use neutral principles, not required to use same.

> "We cannot agree, however, that the First Amendment *requires* the State to adopt a rule of *compulsory*

deference to religious authority in resolving church property disputes . . .''

Id. at 3026.

Respondents' contention herein that a State may use any method of resolving church disputes so long as the courts do not become involved in deciding ecclesiastical questions or questions of polity, is well supported by decisions of the courts *since Jones v. Wolf.* Since the decision in *Jones v. Wolf* in 1979, the Supreme Courts in Florida, Iowa, Nevada and New Jersey have held that the deference rule continues to be the law of those states. *Mills v. Baldwin,* 377 So.2d 971 (Fla.), *cert. denied,* 446 U.S. 983 (1980); *reinstating* 362 So.2d 2 (Fla. 1978), *vacated,* 443 U.S. 914 (1979); *Fonken v. Community Church of Kamrar,* 339 N.W.2d 810 (Iowa 1983); *Tea v. Protestant Episcopal Church,* 96 Nev. 339, 610 P.2d 182 (1980); *Protestant Episcopal Church v. Graves,* 83 N.J. 572, 417 A.2d 119 (1980), *cert. denied,* 449 U.S. 1131 (1981); *Newark v. Burns,* 83 N.J. 594, 417 A.2d 31 (1981); *Bennison v. Sharp,* 121 Mich. App. 705, 329 N.W.2d 466 (1982). In addition, the language concerning neutral principles found in *Jones v. Wolf* is fully consistent with decisions reached in states that, although they use deference, also would have ruled the same under the neutral principles approach. *Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore of the United Presbyterian Church,* 296 Md. 573, 464 A.2d 1008 (1983); *Calvary Presbyterian Church v. Presbytery of Baltimore,* 39 Md.App. 406, 386 A.2d 357 (1978); *Fonken v. Community Church of Kamrar,* 339 N.W. 2d 810 (Iowa 1983).

As can clearly be seen, the various states which have considered this type of question are relying upon their

own state law. This is the reason why different jurisdictions are arriving at different methods for determination. The next pertinent question then has to be "what is the law in TEXAS?"

TEXAS LAW

The law in Texas is and has been since the late 1800's well settled with regard to church property disputes of the kind presently before this Court. The law in Texas is clear and there are no conflicting decisions.

The Texas Supreme Court, first in 1900 and again in 1908, adopted for Texas the law previously pronounced by the United States Supreme Court in *Watson v. Jones, supra,* a theory which has recently been held by the United States Supreme Court in *Maryland and Virginia Eldership of the Churches of God at Sharpsburg, Inc.,* 90 S.Ct. 449 (1970), to be a constitutionally permissible "neutral principle of law" upon which the Court should decide this case. [See also *First Baptist Church of Paris v. Fort,* 54 S.W. 892 (Tex. 1900); *Brown v. Clark,* 116 S.W. 360 (Tex. 1909).]

As has been stated previously, the civil courts are limited in their power to resolve church-related disputes. The First Amendment to the United States Constitution prohibits the exercise of any jurisdiction over purely ecclesiastical matters. *Watson v. Jones, supra.* Texas has long recognized this.

In *Cussen v. Lynch,* 254 S.W. 932 (Tex.Civ.App.—1922) ref., the Court considered a property dispute involving the Roman Catholic Church, which also is hierarchical in nature. The Court recited the settled Texas law re-

garding church property disputes involving hierarchical churches and concluded that when an ecclesiastical question has been decided by ecclesiastical tribunals, such decisions are binding on the civil courts in trial of dependent property rights.

Since *Cussen v. Lynch, supra,* Texas cases have consistently held for deference in hierarchical situations. See *Browning v. Burton,* 273 S.W.2d 131 (Tex.Civ.App.—Austin, 1984), ref., n.r.e.; *Norton v. Green,* 304 S.W.2d 42 (Tex.Civ.App.—Waco, 1957) ref., n.r.e.; *Church of God and Christ, Inc. v. Cawthon,* 507 F.2d 599 (5th Cir., 1975).

In *Presbytery of the Covenant v. First Presbyterian Church in Paris,* 552 S.W.2d 865 (Tex.Civ.App.—Texarkana, 1977) (arising out of the District Court of Lamar County), Texas appellate courts adopted the "identity" approach to resolving hierarchical disputes, stating that:

> "*In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity,* which in turn necessarily settles a dispute involving property rights. *In doing so, the court applies neutral principles of law* as required by *Presbyterian ,Church v. Blue Hull Church, supra; Adickes v. Adkins, supra.*" (Emphasis added.) 522 S.W.2d at 871.

The determination of which of two factions is loyal and should be sanctioned by the church is clearly one which is left to the ecclestiastical courts to be determined under canon law, a set of laws which these Petitioners swore to uphold and obey. However once this decision has been made by the highest ecclesiastical authority, it then becomes the province of secular courts to recognize and enforce that decision, especially where, as here, one of the

two factions has become affiliated with a schismatic organization. Although dissatisfied members may withdraw their membership from the local church, and thus dissolve their affiliation with the mother church, it is apparent that such a decision under Texas law does not give them any right, or interest, which would allow them to claim the property of the church they have abandoned.

Petitioners attempt once again to make something out of "changes" proposed for the Book of Church Order after the schism. However if anything, such "changes" support the Respondents' position. As was noted in *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 819 (1983), a case *after Jones v. Wolf:*

> "The failure of UPCUSA's General Assembly in 1930 to amend its constitution to provide for an express trust in local church property does not negate the existence, if it otherwise appears, of an implied trust. A 1980 report recites that the 1930 amendment was supported by a majority of churches that voted but failed to carry a majority of those eligible. The report also notes that the general church prevailed in civil litigation on a theory of implied trust before and after the failure of the amendment. *Nor does the 1981 action of the General Assembly in adopting such an amendment change our view.* The record shows the 1981 amendment was adopted because of uncertainty concerning the effect of *Jones v. Wolf* on the theory of implied trust. It does not affect our determination based on neutral principles that an implied trust exists as a result of UPCUSA's polity giving it determinative authority over the property of its subordinate churches." (Emphasis added.)

Id. at 819.

Further, in *Protestant Episcopal Church v. Graves*, 83 N.J. 572, 417 A.2d 19 (1980), *cert. denied*, 449 U.S. 1131

(1981), the Supreme Court of New Jersey held in favor of the Episcopal denomination under the deference rule, stating:

> "It is true that this express trust provision was not a part of the written canons when St. Stephen's decided to sever its relationship with the Diocese and the national church. *Nevertheless, it reflects established customs, practices and usages of the Protestant Episcopal Church.*"

83 N.J. at 581, 417 A.2d at 24.

In any event, the "Pastoral Letter," a binding church injunction, was present long before the schism. The "Pastoral Letter" is a church injunction which has its origins in Chapter 15 of the Book of Church Order. The Book of Church Order is a part of the Constitution of the PCUS. The "Letter" is a binding and lawful injunction issued in 1973 by the appropriate body, years before this litigation ensued. It is a document which was served upon the leaders of the schismatic group and to which they posed no objections. Their ministers swore allegiance to the form of church government, including the issuance of lawful injunctions.

The "Pastoral Letter" states plainly that the local church property is to be held by trustees for the benefit of the main denomination which established the church. It is unequivocal in its terms. Thus, Petitioners want this Honorable Court to intrude into the affairs of the church and ignore, thereby effectively nullifying, the church injunction.

This is where their "we incorporated our wrongdoing argument" comes into play. They state that because they incorporated (as do most churches in PCUS), that some-

how they are exempted out of this process. Somehow, in incorporating, they hope that it will change the rules of the game, *after* it has been played. It is an attempt to elevate form over substance.

CONCLUSION

WHEREFORE, Respondents re-urge their Motion, *supra,* to the jurisdiction of the Court, and, in the alternative, that *certiorari* be denied.

Respectfully submitted,

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No. 86-1911

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CASA LINDA PRESBYTERIAN CHURCH
IN AMERICA, ET AL,

Petitioners

vs.

GRACE UNION PRESBYTERY, INC., ET AL,

Respondents

PETITIONERS' REPLY TO RESPONDENTS BRIEF IN OPPOSITION TO CERTIORARI

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The Texas court ignored the clear mandate of both *Jones* and *Watson* that the deference rule may constitutionally be applied only where the church property involved has not been dedicated to the purpose of maintaining definite religious doctrines. *Watson* first propounded this constitutional safeguard as follows:

> . . . an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles . . . the obvious duty of the court . . . (is) to see that the property is not diverted from the trust which is thus attached to its use.

Watson v. Jones, 80 U.S. at 723

Although the Texas court cites *Jones* as the reason for eliminating this constitutional protection of religious freedom, this Court in that case specifically reaffirmed the *Watson* safegaurd as follows:

> Indeed, even in *Watson v. Jones,* a common law decision heavily relied upon by the dissent, Mr. Justice Miller, in speaking for the court, stated that regardless of the form of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will or other instrument of church property ownership.

Jones v. Wolf, 443 U.S. at 603

Respondents' wording in this counterpoint that "the deed of grant" did not so dedicate the property in this case cleverly conceals the fact that here the instruments so dedicating the property are the charter and by-laws of the non-profit corporation holding title to the church property.

The Texas Court of Appeals did *not,* as Respondents claim in this counterpoint, follow previous Texas decisions. *Brown v. Clark,* 116 S.W. 360 (Tex. 1909), cited by Respondents as the case beginning the deference rule in Texas, correctly applied the *Watson* safeguard by first noting that

> . . . there is not attached to that property any trust either -express or implied.

Brown v. Clark, 116 S.W. at 364

Respondents conclude Counterpoint No. 1 with what is tantamount to an assertion that this Court has for over one hundred years mandated a constitutional safeguard for religious freedom that cannot be constitutionally invoked. Respondents assert that it would be unconstitutional for this Court to determine the uncontested facts that the subject church property is dedicated to a specific religious purpose and that the property would be diverted from that purpose if acquired by the group designated by Respondent Presbytery.

II.

Respondents' Counterpoint No. 2 seems to be a restatement of the first counterpoint.

III.

Counterpoint No. 3 introduces the spurious issue of "the identity of the true congregation". Under the *Watson* principle of seeing that the property is not diverted from the trust attached to its use, the only question of identity is who is qualified, willing and interested in carrying out the trust. It is uncontested that only Petitioners (although labeled by Respondents as "Schismatics"), are qualified and willing to maintain that doctrine and are today standing in court. Respondents with their Statement of Belief, nine confessions and a Book of Church Order are neither qualified nor willing to maintain a church whose doctrine and government are prescribed by the Holy Scriptures and the Westminister Confession of Faith.

IV.

Actually all three of Respondents' counterpoints are germane to Petitioners' First Reason For Granting the Writ; therefore we will confine this reply to Respondents' objections to that reason. Respondents' arguments may be summarized into three categories: First, a vague attack on Petitioners which attempts to make Petitioners' clear position under *Watson* and *Jones* appear ridiculous; second, a long defense of the deference rule which carefully avoids the basic issue in this case, i.e., whether the deference rule is applicable to church property dedicated to a specific religious doctrine; and a dissertation on Texas law which includes a generous portion of ecclesiastical "law" that is outside the record, untrue and not a proper subject for judicial inquiry according to Respondents' own contentions. Respondents' attempt to impugn the "Schismatics' (Petitioners') own religious beliefs" as being those for which the trust was established only confirms the Petitioners' qualification and willingness to uphold the Holy Scriptures and the Westminister Confession of Faith. Respondents' allegation that the "Schismatics (Petitioners) first condemn the idea of any sort of trust being present, then turn around and state there was a trust of sorts" ridicules but does not hide the important truth: There was no implied trust in favor of Respondents; there is an express trust that only Petitioners can and will uphold, and under which they hold title to the property.

Contrary to Respondents' assertion that the application of the *Watson* and *Jones* dedication principle would drag the Court into a searching inquiry into an ecclesiastical question, the record is clear that Petitioners' charter and by-laws in effect at all times material to this case (and still in effect) continue to dedicate the property to the same trust under which it has been and is held. Petitioners believe this is conclusive evidence that they meet the *Watson* test that

> So long as there are persons qualified within the meaning of the original dedication, and who are also willing to

> teach the doctrines or principles described in the act of dedication, and so long as there is anyone interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses . . .

Watson v. Jones, 80 U.S. at 723

Petitioners did not institute this lawsuit; Respondents did in an attempt to divert the property to other and different uses, namely, to sustain and propagate Respondents' Statement of Belief, nine confessions and Book of Church Order.

Respondents allege that Schismatics' (Petitioners') arguments and authorities are "replete with inaccuracies" but provide not a single example of such alleged inaccuracies. Respondents' assertion that Schismatics' (Petitioners') argument and authorities are clearly *in extremis,* if true, would mean that the *Watson* and *Jones* principles upholding the right of an association of individuals to dedicate property to maintain a definite religious doctrine is at the point of death. Petitioners trust that the Courts' response to this dire assessment will be: "Not so long as this Court sits".

Respondents' "departure from doctrine" straw man appears to be set up to try to distract this Court from the real issue in this case: The deference rule of *Watson* and *Jones* is not applicable where an attempt is made to divert church property from the use to which it is dedicated. In this situation, the test is who would provide "adherence to doctrine".

Respondents' long defense of the "Deference Rule" is not germane to Petitioners' Reason I for granting the Writ. Here Petitioners do not attack the deference rule as promulgated in *Watson;* Petitioners do object to the Texas courts contravening both *Watson* and *Jones* by holding that the rule may be applied without regard to whether the property is held either by an independent congregational church or for maintaining a specific religious doctrine.

Respondents' vague description of Texas law relies on Texas' adoption of *Watson v. Jones* but again carefully avoids any discussion of that case's holding out that the "deference rule" is not applicable to church property which has been, by deed, will or other instrument by which the property is held, devoted to some specific religious doctrine or belief. Respondents' assertion that Texas recognizes that civil courts have no jurisdiction over purely ecclesiastical matters does not come to grips with the issue in this case. Here we deal with a civil matter: Ownership of property.

Respondents' tenuous attempt to weave a "Pastoral Letter" into a part of the Constitution of the PCUS ignores this court's finding relative to the PCUS as follows:

> . . . the constitution of the general church, the Book of Church Order, concerning ownership and control of property, failed to reveal any language of trust in favor of the general church.

Jones v. Wolf, 443 U.S. at 601

Respondents' final allegation that we Petitioners "incorporated our wrongdoing" is also outside the record and untrue. Long before the action Respondents complain of, Petitioners openly and legally, and in accord with this Court's mandate, dedicated the subject property to maintaining a church whose doctrine, tenants and form of government were dedicated to those prescribed by the Holy Scripture and Westminister Confession of Faith. Petitioners trust that Respondents' inflammatory, untrue and outside-the-record statements will not deter this Court from carrying out its own mandate and preventing this property from being diverted from its dedicated use.

V.

Respondents' doubt that the federal issue in this case was presented to the Texas State courts can be eliminated by referring to Point of Error No. 7 in Petitioners' Brief to the Court of Appeals and by Ground No. 7 in its Motion for Rehearing to that court and to Points of Error Nos. 2 and 3 in both Petitioners Application for Writ of Error and Motion for Rehearing to the Texas Supreme Court.

VI.

Respondents erroneously allege Petitioners are a dissident faction formerly belonging to Casa Linda Presbyterian Church; actually Petitioners are members and trustees of the Casa Linda Presbyterian Church Corporation who are defending the trust under which the property is held.

Respondents complain that the corporate meeting at which the subject action was taken "was not in compliance with church law". There is no church law governing corporate meetings and if there were, it would not be an appropriate inquiry by a civil court. The record is clear that the meeting and the action taken were in accord with the law of the State of Texas under which the association was incorporated.

Respondents' assertion that there are two groups claiming to be Casa Linda Presbyterian Church raises another false issue. One group is that designated by Respondent Presbytery (on the basis of postcards returned to the Presbytery) "recognized as the Casa Linda Presbyterian Church of Dallas, Texas, a constituent congregation of Grace Union Presbytery". This group adheres to doctrine and government according to their Statement of Belief, nine confessions and a Book of Church Order. The other group is the Casa Linda Presbyterian Church of Dallas, Texas, a Texas Corporation holding title for the Casa Linda Presbyterian Church of the Presbyterian Church in

America. The latter group recognizes that it holds that title to maintain a church, Presbyterian in its doctrines, tenents and form of government as prescribed by the Holy Scriptures and the Westminister Confession of Faith.

Respondents emphasize that "the Trial Court took the case away from the jury and decided in Respondents' favor", but fail to point out that the Court of Appeals found no evidence to support the Trial Court's holding that Respondent Presbytery's Administrative Commission "did legally determine and declare that the Plaintiff . . . was the beneficial owner of all the real and personal property . . . " The Court of Appeals then relied upon their "deference rule" to find for Respondents without considering the trust under which Petitioners hold the property. It is significant that Respondents do not challenge Petitioners' reliance on this Court's reasoning in *Larkin v. Grendel's Den, Inc.* 459 U.S. 116 (1986), to the effect that the Framers of the Constitution " . . . did not set up a system of government in which important discretionary governmental powers would be delegated or shared with religious institutions." To do so would put the spotlight on the Texas court's reliance on an ecclesiastical court action to determine ownership of property.

In order to avoid doubtful titles in all churches, congregational as well as hierarchical, dedicated and undedicated, this Texas "deference rule", asserted to be constitutional without qualifications, should be repudiated by this Court and the trust under which petitioners hold title should be upheld by reversing the Texas Court of Appeals.

Conclusion

Wherefore, Petitioners respectfully re-urge the Court, for all of the reasons set forth in our Petition and this Reply, to grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

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